IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.R. No.5478 of 2007
Date of Decision:19.10.2007

Narender Singh and another

.....Petitioners

Vs.

Satyender Singh and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Shiv Kumar, Advocate for the petitioners.

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Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 5.10.2007 passed by the Civil Judge (Junior Division), Faridabad, whereby on account of non-filing of written statement by the petitioners/ defendants, their defence was struck off and the case was adjourned for evidence of the respondents/ plaintiffs on 12.11.2007.

For the view I am taking, I do not deem it appropriate to issue notice of motion to the respondents/ plaintiffs as the same would not only delay the disposal of the present petition but even delay the disposal of suit before the learned court below.

Learned counsel for the petitioners submits that in spite of there being no service of the petitioners/ defendants in the suit, on having came to know about the pendency thereof, they had put in appearance of their own on 9.5.2007. On this date, the case was adjourned to 31.5.2007 for filing of written statement. Thereafter, as there were talks going on for compromise between the parties, who are real brothers, the written statement could not be filed and on 5.10.2007, the impugned order was passed striking off the defence of the petitioners/ defendants for non-filing of the written statement within 90 days. He further submitted that the written statement is ready and in case an opportunity is granted, the same will be filed immediately. He has relied upon judgments of Hon'ble the Supreme Court in **Kailash v. Nanhku and Others,** JT 2005(4) SC 204; **Salem Advocate Bar Association, Tamil Nadu v. Union of India,** JT 2005(6) SC 486 and **M/s R.N.Jadi & Brothers and Others v. Subhashchandra,** JT 2007(9) SC 165 to submit that Order VIII Rule 1 CPC has been held to be directory in nature and not mandatory.

After hearing learned counsel for the petitioners, I find merit in the contentions raised by him.

It has been consistently opined by Hon'ble the Supreme Court in the judgments referred to above that the Order VIII Rule 1 CPC which provides time for filing of written statement is directory in nature.

It is unfortunate that brothers are fighting litigation in Court. Still from the facts it is not evident that the intention of the petitioner was to delay the proceedings as he had put in appearance in the suit without even his service having been effected. Accordingly, the petition is accepted. The petitioners/ defendants are granted time to file written statement before the learned trial court on or before the next date fixed and the case will proceed further as per the schedule already fixed by the court.

The revision petition is disposed of in the manner indicated above.

A copy of the order be given dasti on payment of usual charges.

October 19, 2007 **(RAJESH BINDAL)**
renu **JUDGE**